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October 6, 2006

**BY ELECTRONIC FILING**

The Honorable Kent A. Jordan  
United States District Court  
844 North King Street  
Wilmington, DE 19801

Re: *Biovail v. Andrx Pharmaceuticals LLC et al.*,  
Civil Action Nos. 05-586 (KAJ) (Consolidated) and 06-620 (UNA)

Dear Judge Jordan:

In this patent litigation, Biovail sued Andrx based on Andrx's filing of an Abbreviated New Drug Application ("ANDA") seeking to market a generic version of Biovail's Cardizem LA® product. As we advised the Court on August 25, 2006, Biovail was awaiting the issuance of a new patent that also covers its Cardizem LA® product and anticipated filing a complaint alleging that Andrx's proposed ANDA product would infringe that patent as well.

The new patent, U.S. Patent No. 7,108,866, issued on September 19, 2006, and on October 4, 2006, Biovail filed a complaint in this District as a related action. In order to facilitate discovery and make efficient use the parties' and the Court's resources, the parties have agreed that this new action should be consolidated with the earlier action for all purposes, and also have agreed, subject to the Court's approval, to the following schedule for the proposed consolidated action:

<b><u>Event</u></b>	<b><u>Current Date</u></b>	<b><u>Proposed Date</u></b>
Fact Discovery Cut Off		January 15, 2007
Initial Expert Reports		February 7, 2007
Rebuttal Expert Reports		March 23, 2007
Expert Deposition Deadline	October 13, 2006	April 20, 2007
Claim Construction Exchange	October 13, 2006	April 20, 2007
Dispositive Motions	October 27, 2006	May 18, 2007
Claim Construction Briefs	October 27, 2006	May 18, 2007

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Accordingly, if they are acceptable, the parties jointly request that Your Honor enter the attached Order of Consolidation (Tab A), and Scheduling Order (Tab B) for the consolidated action. Counsel are, of course, available for a conference should the Court have any questions.

Respectfully,

*/s/ Jack B. Blumenfeld (#1014)*

Jack B. Blumenfeld

Enclosures

cc: Peter T. Dalleo, Clerk (By Hand)  
Richard L. Horwitz, Esquire (By Hand and E-Mail)  
Steven A. Maddox, Esquire (By E-Mail)

**TAB A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BIOVAIL LABORATORIES	)	
INTERNATIONAL SRL, a corporation of	)	
Barbados,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-586 (KAJ)
	)	C.A. No. 05-730 (KAJ)
ANDRX PHARMACEUTICALS, LLC and	)	C.A. No. 06-620 (KAJ)
ANDRX CORPORATION,	)	CONSOLIDATED
	)	
Defendants.	)	
	)	
-----	)	

**ORDER OF CONSOLIDATION**

At Wilmington this \_\_\_\_ day of October, 2006,

IT IS HEREBY ORDERED that C.A. No. 05-586-KAJ, C.A. No. 05-730-KAJ  
and C.A. 06-620-KAJ are consolidated for all purposes.

Hereafter all papers will be filed under C.A. No. 05-586-KAJ.

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United States District Judge

# TAB B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BIOVAIL LABORATORIES	)	
INTERNATIONAL SRL, a corporation of	)	
Barbados,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-586 (KAJ)
	)	C.A. No. 05-730 (KAJ)
ANDRX PHARMACEUTICALS, LLC and	)	C.A. No. 06-620 (KAJ)
ANDRX CORPORATION,	)	CONSOLIDATED
	)	
Defendants.	)	
	)	
-----	)	

**FOURTH REVISED SCHEDULING ORDER**

The Court having considered the October \_\_, 2006 joint letter application of the parties,

IT IS HEREBY ORDERED this \_\_\_\_ day of October, 2006, that the Court's August 28, 2006 Third Revised Scheduling Order (D.I. 90) is hereby revised as follows:

3. Discovery.

c. Discovery Cut Off. Fact discovery in this case shall be initiated so that it will be completed on or before January 15, 2007. The Court encourages the parties to serve and respond to contention interrogatories early in the case. Unless ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

d. Disclosure of Expert Testimony. The parties shall serve their initial expert reports on or before February 7, 2007, and rebuttal expert reports on or before March 23, 2007. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), it shall be

made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

10. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before May 18, 2007. Briefing will be presented pursuant to the Court's Local Rules.

11. Claim Construction Issue Identification. If the Court does not find that a limited earlier claim construction would be helpful in resolving the case, on April 20, 2007, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted pursuant to paragraph 12 below. The parties, Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

12. Claim Construction. Issues of claim construction shall be submitted to the Court no later than May 18, 2007 to be considered by the Court in conjunction with the parties' summary judgment motions.

13. Hearing on Claim Construction. At such time as the Court may schedule, the Court will hear evidence and argument on claim construction and summary judgment.

15. Pretrial Conference. At such time as the Court may schedule, the Court will hold a Final Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on such time as the Court may schedule.

18. Trial. This matter is scheduled for a 10 day bench trial beginning at such time as the Court may schedule. For the purpose of completing pretrial preparations, counsel should plan on each side being allocated a total of 30 hours to present their case.

All other provisions of the Court's August 28, 2006 Third Revised Scheduling Order (D.I. 90) remain in effect.

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United States District Court Judge